

Department of the Treasury

Date: JUN - 6 1996

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code and have determined that you do not qualify under this section. Our reasons for this conclusion and the facts on which it is based are explained below.

The evidence submitted indicates that you were incorporated [REDACTED] under the laws of [REDACTED]. The purpose of your corporation, described in Article Third of your Articles of Incorporation indicate that your primary purpose is "To promote, advance and sponsor amateur [REDACTED] and amateur athletics; to pursue exclusively charitable and educational purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or corresponding section of any future United States Internal Revenue law." Adequate provision has been made in this document for the distribution of your assets to qualified organizations in the event the corporation dissolves.

In your application, you state that your primary activity "will be to sponsor an amateur [REDACTED] playing games in [REDACTED]. The team consists largely of post-high school players, none of whom receives any compensation for playing, who are interested in continuing to develop their baseball skills."

You further indicate in your application that "Home games will be played on the [REDACTED] field and will be open to spectators free of charge. The team will be run entirely by volunteers from the community." You also indicate that "the team provides recreation for the community and promotes sportsmanship and instruction among the members of the team."

Code	Initiator	Reviewed	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
Surname	[REDACTED]	[REDACTED]	[REDACTED]				
Date	[REDACTED]	[REDACTED]	[REDACTED]				



You state in your original application that the activities of [REDACTED] are clearly charitable and educational and advance amateur athletics within the meaning of section 501(c)(3) of the Code. In a letter dated [REDACTED] we requested certain information regarding your proposed activities and methods of operation. In your [REDACTED] response to us, the following additional information was submitted:

1. There are [REDACTED] amateur players on the team, [REDACTED] of whom are over the age 21. None of the players are under 18.
2. [REDACTED] conducts an "instructional program beginning in early April. The team uses some of its player coaches to instruct the players on various techniques of [REDACTED]"
3. You indicate there is no written curriculum and that [REDACTED] has no plans to sponsor any clinics or seminars for people outside the team.
4. Members of the team are selected through competitive try-outs by the President of the organization, [REDACTED] who also functions as general manager.
5. You indicate that [REDACTED]% of the organization's financial support will come from contributions. You state that you do not expect to conduct a general solicitation campaign from the community but expect to receive the majority of your support from your President, [REDACTED]
6. You indicate in this letter that in addition to serving educational and charitable purposes, [REDACTED] also, "enhances the social welfare in [REDACTED] by providing free, quality entertainment for the entire community."

In your original application, you requested status as a private operating foundation for purposes of your foundation classification under section 509 (a) of the Code.

You further indicated that it was unlikely that [REDACTED] could qualify as a publicly supported organization since your financial support would come from a limited group of donors.



Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income tax for organizations organized and operated exclusively for charitable, religious, educational and other stated purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to qualify for exemption under section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under this section.

Section 501(c)(3)-(b)(1) of the Income Tax Regulations specifies that an organization is organized for one or more exempt purposes, if its Articles of Incorporation limit the purposes of such organization to exempt purposes.

Section 1.501(c)(3)-1(b)(1)(iv) of the Income Tax Regulations specifies that an organization is not organized exclusively for exempt purposes if, by the terms of its articles, its purposes are broader than the purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(b)(4) of the Regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government for a public purpose.

Section 1.501(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if its Articles of Incorporation limit the purposes of such organization to exempt purposes.

Section 501(c)(3)-(d)(1) of the Income Tax Regulations states that an organization is not organized or operated for any purpose under section 501(c)(3) unless it serves a public rather than a private interest.



Thus, to meet the requirements of this subparagraph, an organization must establish that it is not organized and operated exclusively for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization or persons controlled directly or indirectly by such private interests.

Section 1.501 (c)(3)-1(d)(3)(i) of the Income Tax Regulations defines education as:

- (a) The instruction or training of an individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful to to the individual and beneficial to the community.

These regulations define an educational organization as:

- 1. A primary or secondary school, college or trade school which has a regular faculty, a regularly scheduled curriculum and a regularly enrolled body of students in attendance at a place where the educational activities are carried on;
- 2. An organization whose activities consist of presenting public discussion groups, forums, panels, lectures or other similar programs.
- 3. An organization which presents a course of instruction by means of correspondence or through the utilization of radio or television.
- 4. Museums, zoos, planetariums, symphony orchestras and other similar organizations.

In *Better Business Bureau v. United States*, 326, U.S. 279-283, the court held that the existence of a single non-exempt purpose, if substantial in nature, will destroy exemption under section 501(c)(3) regardless of the number or importance of truly exempt purposes. To qualify for exemption under section 501(c)(3), the applicant organization must show that (1) it is organized and operated exclusively for religious, charitable or other stated purposes, (2) that no part of the net earnings inures to the benefit of a private individual or shareholder, and (3) that no substantial part of its activities consists of the dissemination of propaganda or otherwise attempting to influence legislation or engaging in political activity. See *Kenner v. Commissioner*, 318 F. 2nd, 632 (7th Cir. 1963).



In Revenue Ruling 55-587, 1955-2, C.B. 261, the Service recognized as educational an organization that directs and controls interscholastic high school athletic competition; prescribes eligibility rules for contestants and penalties for the violation of such rules and the rules of play in various sports. The organization conducts sectional, district and state meets or tournaments and trains and assigns game officials.

Revenue Ruling 65-2, 1965-1 C.B., 227, states that an organization that conducted sports clinics for student players, provided free instruction, encouraged youth participation in tournaments and arranged for attendance of players and instructors at state tournaments meets the requirements to be educational within the meaning of Internal Revenue Code section 501(c)(3).

In Revenue Ruling 70-4, 1970-1, C.B., 126, an organization that publicized a sport and conducted tournaments but had no regular program of teaching the sport was denied exemption under section 501 (c)(3) as an educational organization and was characterized as an IRC 501 (c)(4) social welfare organization.

In rejecting the conclusion that this organization was educational, the Service stated:

..."The organization's activities primarily consist of the promotion and regulation of a sport for amateurs. Promotion and regulation of a sport for amateurs neither improve or develop the capabilities of the individual nor instruct the public on subjects useful to the individual and beneficial to the community within the meaning of the regulations. Therefore, these activities are not educational within the meaning of section 501(c)(3) of the Code."

In Revenue Ruling 80-215, 1980-2, C.B., 174, an organization that provided the teaching of a particular sport to children under the age of 18 by holding clinics conducted by qualified instructors and by providing free instruction and equipment was found to be both educational and charitable within the meaning of section 501(c)(3). The organization was held to be educational because it provided instruction to the individual to improve his individual capabilities. The organization was also deemed charitable since its activities helped prevent juvenile delinquency.



In The Media Sports League, Inc, (TMSL) 52 TCM, 1986-568, an organization was formed to establish an amateur adult sports league. Membership was open to all individuals twenty-one years of age or older who wanted to participate. The organizations activities consisted of four divisions, and included touch football, slow pitch softball, volleyball and special events (including a dart tournament and Swim-Across for the [REDACTED]).

Each division had 15 teams that were sponsored by local businesses and sponsorship fees.

In reviewing the educational activities of TMSL, the court noted that for purposes of section 501 (c)(3), "educational" means "the instruction or training of the individual for the purpose of improving his capabilities." While TMSL did conduct an instructional program, the program was informal and not mandatory and there was no indication that TMSL provided any further instruction through clinics, classes or seminars to improve members' skills. Based on this evidence, the court concluded the TMSL's educational purpose did not comprise a substantial part of its activities.

TMSL's also stated in its application that its primary purpose "is to encourage community interaction through athletic competition and therefore was operated for charitable purposes. In rejecting this argument, the court noted the record contained no indication that any neighborhood tension, prejudice or discrimination existed, or if one or more of these circumstances did exist, how TMSL's operations would ameliorate or even address these problems.

In rejecting TMSL's argument that it furthered amateur athletics, the court stated that TMSL's activities served a substantial non-exempt purpose of furthering the social and recreational interests of its members. The court also stated that "We have repeatedly held that organizations whose activities are directed substantially toward social and recreational purposes are not eligible for 501 (c)(3) status." North American Sequential Sweepstakes v. Commissioner 77 T.C. 1087 (1981), Syrang Aero Club Inc. v. Commissioner, 73 T.C. 117.

With regard to the organizational test required to be exempt under section 501 (c)(3), the Articles of Incorporation filed by [REDACTED] with the [REDACTED] show [REDACTED] is properly organized for one or more exempt purposes and that adequate provision has been made for the distribution of assets in the event the corporation dissolves.



With regard to the operational test required to be exempt under section 501(c)(3), you indicate in your application that you are operated for the following purposes:

1. Educational
2. Charitable
3. Further amateur athletics

The basis for your conclusion that [REDACTED] is operated for educational purposes is that you conduct an instructional program in early April for the players on [REDACTED]. However, you indicate that you use no written curriculum or have any plans to sponsor any clinics or seminars for the participants.

In The Media Sports League, [REDACTED] (TMSL), the court described the requirements to be considered educational within the meaning of section 501(c)(3). The court states that for purposes of section 501(c)(3), educational means in relevant part, "the instruction or training of the individual for the purposes of improving or developing his capabilities." The court noted the following regarding TMSL's educational program:

1. There was no formal instruction.
2. Attendance at training sessions was not mandatory.
3. There was no indication that TMSL intended to provide further instruction through clinics, classes or to improve member's skills.

On the basis of the evidence submitted, the court concluded that TMSL's educational purpose did not comprise a sufficient part of its activities to be exempt under section 501(c)(3). In reviewing the educational portion of your program, we have concluded that your operations are similar to those conducted by TMSL where the court concluded that the educational program provided did not meet the requirements for TMSL to be recognized as exempt under section 501(c)(3) as "educational."

In your application you indicate the [REDACTED] is operated for charitable purposes. However, like the organization described in TMSL, you have provided no evidence to indicate that your activities will lessen neighborhood tensions, eliminate prejudice and discrimination or that any of these problems exist. As the court noted in TMSL, section 1.501(c)(3)-1(d)(2) of the regulations requires that to be considered "charitable", an organization seeking exemption under section 501(c)(3) must demonstrate that these conditions exist and that its activities are designed to improve these problems. There is no evidence in the record to indicate that the activities of [REDACTED] include programs to ameliorate these types of problems. Therefore, on the basis of the information submitted your activities do not demonstrate that [REDACTED] is operated for charitable purposes.



[REDACTED]  
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You also state that your activities further amateur athletics. However, based on the evidence in the file, you indicate that the baseball activities involve adults. In Revenue Ruling 70-4, the Service held that when an organization's activities "primarily consist of the promotion and regulation of a sport for amateurs, or adults, these activities are not educational within the meaning of section 501(c)(3) of the Code".

Your application also states, as part of your basis for exemption under section 501(c)(3), that [REDACTED] provides "free entertainment for the residents of the [REDACTED]". By providing for the social and recreational needs of the residents of [REDACTED] is serving a substantial non-exempt purpose which destroys exemption under section 501(c)(3).

The courts have consistently held in *North American Sequential Sweepstakes v. Commissioner*, 77 T.C. 1087, and *Syrang Aero Club, Inc. v. Commissioner*, 717 (1980), that organizations whose activities are directed toward social and recreational purposes are not eligible for exemption under section 501(c)(3) since they are not operated exclusively for a purpose described in this section.

Based on the information submitted, we have determined that you fail the operational test required to be exempt under section 501(c)(3). Thus, we have concluded that you are not entitled to exemption under section 501 (c)(3). In accordance with this determination, you are required to file federal income tax returns on Form 1120.

Contributions to your organization are not deductible by donors under section 170(c)(2) of the Code.

In accordance with section 6104 (c) of the Code, a copy of this letter will be sent to the appropriate state officials.

If you do not agree with our determination regarding your tax exempt status under section 501 (c)(3), you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892.



[REDACTED]  
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Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the Regional Office, or if you request, at any mutually convenient district office.

If you will be represented by someone who is not one of your principal officers, that person will need to file a Power of Attorney or tax information authorization with us.

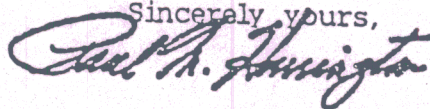
If you don't appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust administrative remedies.

Section 7428 (b)(2) of the Code provides, in part, that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted all administrative remedies available to it within the Internal Revenue Service."

Appeals which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,



Paul M. Harrington  
District Director

cc: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Enclosure: Publication 892

cc: State Attorney General [REDACTED]